

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5725**

**PETITION OF ANDREW AND RITA ARAI**  
(Hearings held March 6 and April 3, 2002)

**OPINION OF THE BOARD**  
(Effective date of Opinion, May 3, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59 Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioners propose to construct a two-story addition that requires a 13.80 foot variance as it is within 11.20 feet of the front lot line. The required setback is twenty-five (25) feet.

The subject property is Lot 2, Block 6, located at 4003 Hampden Street, Kensington, Maryland, in the R-60 Zone (Tax Account No. 01377423).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct an 11.4 x 17 foot two-story addition.
2. The petitioners testified that their property does not comply with the current setbacks for the zone. The petitioners testified that lot was recorded in 1893 prior to the County's zoning ordinance and that the property is an oddly shaped lot with an angled rear lot line. The petitioners testified that the dimensions of their lot are 5,333.75 square feet and that their lot is significantly smaller than the typical R-60 zoned lot.
3. The petitioners testified that the residence is currently sited in the front yard setback and that the house is located 11.4 feet from the front lot line. The petitioners testified that the proposed addition would line up with the front and rear of the existing house. The petitioners testified that their house is sited slightly in front of the house on the adjoining lot to the east of their lot, Lot 1, and that their house is aligned with the house on the adjoining lot to the west of their lot, Lot 3.
4. The petitioners testified that their neighbors support the variance request and that the variance request has the support of their homeowners association, Ken-Gar Civic Association. A letter of support from the Association is entered in the record as Exhibit No. 18.

**FINDINGS OF THE BOARD**

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property,*

*the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The existing residence is currently located in the front yard setback. The property is an oddly shaped lot with an angled rear lot line. The dimensions of the property are 5,333.75 feet, which is significantly smaller than the typical R-60 zoned lot and most of the properties in the immediate neighborhood.

The Board finds that the exceptional size and shape of the lot are conditions peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties for and an undue hardship upon the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no correspondence or testimony in opposition to the variance request and the record does contain a letter of support from the petitioners' homeowners association (Exhibit No. 18). The Board finds that the proposed construction would be aligned with neighboring house on Lot 3 and that the variance will not be detrimental to the use and enjoyment of adjoining and neighboring properties.

Accordingly, the requested variance of 13.80 feet from the required twenty-five (25) foot front lot setback for the construction of a two-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 5 and 7(a) through 7(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelc M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.